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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,741	10/03/2003	Hassan Mostafavi	VM 03-035-US	6107
55499 Vista IP Law G	7590 02/22/201 roup (Varian)	EXAMINER		
1885 Lundy Av San Jose, CA 93	e, Suite 108	RAMIREZ, JOHN FERNANDO		
San Jose, CA 9.)131		ART UNIT	PAPER NUMBER
			3777	
			MAIL DATE	DELIVERY MODE
			02/22/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)		
10/678,741	MOSTAFAVI, HASSAN		
Examiner	Art Unit		
JOHN F. RAMIREZ	3777		

 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s):				
1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this application, applicant must timely file one of the following replies: (1) an amendment, affidative, or other evidence with jain application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.1.14. The reply must be filed within one of the following time periods: a ☐ The period for reply expires on: (1) the mailing date of the final rejection. b) ☐ The period for reply expires on: (1) the mailing date of the final rejection. Examiner Note: if box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEIN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRMA REJECTION. See MFEP 708.07(1). Extensions of lime may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee twater so (2 FR 1.136(a)). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, (2) as many reduce any exame patient term adjustment. See 37 CFR 1.73(b). NOTICE OF APPEAL. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 4.137 must be filed within two months of the date of Notice of Appeal was been filed; any reply must be filed within the time period set from in 37 CFR 4.137(a). AMENDMENTS	The MAILING DA	TE of this communication appears of	n the cover sheet with the co	orrespondence address
application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal de) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a)	THE REPLY FILED <u>08 Febru</u>	ary 2011 FAILS TO PLACE THIS APPL	ICATION IN CONDITION FOR	R ALLOWANCE.
a) ☐ The period for reply expiresmonths from the mailing date of the final rejection. b) ☐ The period for reply expires on: (11 the mailing date of the Advisory Action or (2) the date set forth in the final rejection. whichever is later. In no event however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: if box is ic checked, check either box (3) or (6). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL RELECTION. See NHEP 768.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed its the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed its the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed its the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any examend patient term adjustment. See 37 CFR 1.704(b). CCIC OF APPEAL 2. ☐ The Notice of Appeal was filed on	application, applicant m application in condition	ust timely file one of the following replies for allowance; (2) a Notice of Appeal (wi	s: (1) an amendment, affidavit, th appeal fee) in compliance w	or other evidence, which places the vith 37 CFR 41.31; or (3) a Request
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filled is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked, Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filled, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL. 2. The Notice of Appeal was filled on	a) The period for reply expression in the period fo	xpires on: (1) the mailing date of this Advisory Il the statutory period for reply expire later tha 1 is checked, check either box (a) or (b). ON	v Action, or (2) the date set forth in in SIX MONTHS from the mailing	date of the final rejection.
filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s): would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s) is (or will be) as follows: Claim(s) allowed: 94-97 and 105-108. Claim(s) allowed: 94-97 and 105-108. Claim(s) objected to none. Claim(s) rejected: 56.61-63.667.81.93.103.104.113 and 114. Claim(s) infloration from consideration: 1-32.50-55.75.82-92.98-102 and 109-112. AFFIDANT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because applicant	Extensions of time may be obtain have been filed is the date for pur under 37 CFR 1.17(a) is calculate set forth in (b) above, if checked.	ed under 37 CFR 1.136(a). The date on whice poses of determining the period of extension and from: (1) the expiration date of the shorten. Any reply received by the Office later than the	and the corresponding amount of ed statutory period for reply origin	the fee. The appropriate extension fee ally set in the final Office action; or (2) as
3. ☑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise he issue of new matter (see NOTE below); (c) ☑ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s):	filing the Notice of Appe Notice of Appeal has be	al (37 CFR 41.37(a)), or any extension t	hereof (37 CFR 41.37(e)), to a	avoid dismissal of the appeal. Since a
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): 6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☑ For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: 94-97 and 105-108. Claim(s) objected to: none. Claim(s) rejected: 56.61-63.66.67.81.93.103.104.113 and 114. Claim(s) withdrawn from consideration: 1-32.50-55.75.82-92.98-102 and 109-112. AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence filed after the date of filling a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 4.1.33(d)(1). 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REOUEST FOR RECONSIDERATION/OTHER 11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. ☐ Note the attached Inf	3. The proposed amendm (a) They raise new is: (b) They raise the iss (c) They are not deer	sues that would require further considera ue of new matter (see NOTE below);	ation and/or search (see NOTI	∃ below);
5. Applicant's reply has overcome the following rejection(s):	(d) They present add NOTE: <u>See Cor</u>	ntinuation Sheet. (See 37 CFR 1.116 and	d 41.33(a)).	
how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: 94-97 and 105-108. Claim(s) objected to: none. Claim(s) rejected: 56.61-63.66.67.81.93.103.104.113 and 114. Claim(s) withdrawn from consideration: 1-32.50-55.75.82-92.98-102 and 109-112. AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 13. Other: 14. V. F. R./	5. Applicant's reply has of the following of the following proposed or amonon-allowable claim(s).	vercome the following rejection(s): ended claim(s) would be allowable	 e if submitted in a separate, tir	mely filed amendment canceling the
8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s). 13. Other: 14. F. R./	how the new or amende The status of the claim(s) Claim(s) allowed: <u>94-97</u> Claim(s) objected to: <u>no</u> Claim(s) rejected: <u>56,61</u> Claim(s) withdrawn from	ed claims would be rejected is provided best is (or will be) as follows: "and 105-108". "ne. "-63,66,67,81,93,103,104,113 and 114. "ne consideration: 1-32,50-55,75,82-92,98.	pelow or appended.	be entered and an explanation of
because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s). 13. Other: 14. F. R./				
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13. Other: /Tse Chen/ /J. F. R./	REQUEST FOR RECONSIDE	ERATION/OTHER		
70.11.10	12. Note the attached Info	mation <i>Disclosure Statement</i> (s). (PTO/s	SB/08) Paper No(s)	
		iner, Art Unit 3777		

Continuation of 3. NOTE: Applicant alleges that Kaufman reference provide no disclosure or teachings for calculating an image phase value, and assigning the image phase value for the image data using a processor to thereby bin the image data. However, as argued before, the examiner of record respectfully disagrees with applicant's comments. In column 16, lines 38-67, the specifications of the Kaufman patent specifically states such limitations.

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